

HOUSING COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX PART 52

CONDAL DISTRIBUTORS, INC.,

Petitioner(s),

-against-

Index No.

2300 XTRA WHOLESALERS, INC.,

901548/09

Respondent(s).

April 26, 2010
851 Grand Concourse
Bronx, New York 10451

B E F O R E: HON. ARTHUR ENGoron
Judge, Civil Court

A P P E A R A N C E S:

JOSEPH ALTMAN
Attorney for Petitioner

NEAL ROSENBLUM
Attorney for Respondent

Karen Stell
Court Reporter

1 Decision

2 THE COURT: I hereby grant judgment of
3 possession to the landlord and \$238,229 through
4 November 8, 2010. I believe that the respondent made
5 some errors here, and I don't refer to counsel sitting
6 in front of me because he only recently got involved in
7 this case, but first of all, and sometimes my first
8 impressions are correct and sometimes incorrect.

9 I think the first thing I said with OJ was
10 wait a minute, the lease made it difficult, too, but
11 easier to do something else, but you said that the
12 tenant asked the landlord for permission to do this,
13 put OJ in, and said that the landlord refused. There
14 was never any follow-up. I think it's terribly
15 prejudicial for the tenant's position. By the time we
16 were here, it was just a management agreement.

17 So basically most of the expenses or the
18 defenses, or most of the things that should have done
19 pursuant to the stipulation that weren't done, well, we
20 couldn't, well, it was a management agreement. They
21 are an agent of the tenant. So it would have been
22 done. It's a theory, but I think the law -- and
23 another problem with what happened, as I heard a
24 different context, they found the wrong manager.

25 You picked OJ, who doesn't seem to be
26 particularly responsible; and finally, I often say

1 Decision

2 judges, often say lawyers, certain agreements can buy
3 you a lawsuit.

4 Well, this stipulation, the one on February
5 24th '09, it just gave the landlord so many grounds to
6 evict the tenant because the tenant had to do so many
7 things, and all along my impression was he basically
8 did none of them.

9 It seems that what would be equitable, and he
10 is right about equitable powers, it doesn't seem the
11 tenant was -- they did the best they could. I am
12 somewhat reluctant to go over all these items and in
13 some ways I guess I don't have to because this is a
14 somewhat he-said-she-said case and the finder of fact
15 believes that Mr. Medina's testimony on behalf of the
16 landlord was clear, credible, efficient and correct.

17 In fact, when something was fixed, it was
18 fixed, and on the other side seemed a little bit
19 tailored to the facts as to great debate about whether
20 one form was given. I think the landlord got the
21 better of that.

22 And after all these items that respondent was
23 obligated to do, there's the provision in the
24 stipulation that basically says if the respondent
25 believes that the petition is preventing him, then it
26 wasn't up to him.

1 Decision

2 So I think to a certain extent petitioner
3 made a good point about \$175,000 payment that OJ
4 brought in, and I note that -- unless I am missing
5 something -- once again I don't get to see these things
6 in advance -- the stipulation says in order to bring a
7 document into compliance, the plaintiff agrees, I don't
8 see any exceptions, I am not a gotcha judge, and I
9 believe in good faith and fair dealing, but most of
10 this stuff says what it is on it.

11 Petitioner's engineer report. I don't
12 believe all the sidewalk panels were repaired. It was
13 a good point that to clear a lot in the Bronx may be an
14 unending chore.

15 I don't think there's repairs on the roof. I
16 am not sure about the splinters and stalls. I don't
17 think the tenant retained a structural engineer, and
18 the photographs and testimony seems to make clear that
19 not all the wiring was exposed, in fact, any of the
20 wires exposed.

21 By the way, doesn't say electrical wires,
22 just says wires. Even if we say they mean electrical
23 wires, I don't think it was done, and again, I think
24 what should have been done, because this was a
25 management contract, because there's no exception, I
26 don't think that respondent should say OJ at all, and

Decision

the argument to go back to Judge Billings at one time,
that would have been the correct way to do this.

THE COURT: That's my reasons and that's my
decision.

This is to certify that the foregoing is a true and accurate
transcript of the stenographic minutes taken within.

Karen Stell

Karen Stell
Court Reporter